No. 80-871

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOHN W. BRIDDLE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

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QUESTIONS PRESENTED FOR REVIEW

I. Was Petitioner subjected to double jeopardy when he was charged with perjury and obstruction of justice for statements he made under oath during a traffic court proceeding wherein he was acquitted of the offense of speeding?

II. Was Petitioner's prosecution for the offenses of perjury and obstruction of justice for statements made under oath during a traffic court proceeding wherein he was acquitted barred by the doctrine of collateral estoppel?

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JURISDICTION

Petitioner, invoking 28 U. S. C. Section 1257(3), seeks a review by this Court of *People* v. *Briddle,* 84 Ill. App. 3d 523, 405 N. E. 2d 1357, (1980) being an Illinois Appellate Court decision reinstating an indictment against petitioner for Perjury and Obstruction of Justice. No federal or state statutes are being assailed and it appears that petitioner's grievance is that he has been denied a right guaranteed by the United States Constitution. Petitioner made a timely application for leave to appeal to the Illinois Supreme Court, which was denied. The petitioner also made a timely filing in this Court of the present Petition for a Writ of Certiorari.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the Constitution of the United States provides in part:

> No person shall . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.

STATEMENT OF THE CASE

Petitioner was charged with the offense of speeding, driving 75 miles per hour in a 55 miles per hour zone. The Complaint also indicated that the petitioner was, at that time, operating a silver Chevrolet, bearing dealer plates.

At petitioner's trial, the police officer positively identified the petitioner as the person he clocked on radar doing 75 in a 55; and further testified that the petitioner advised him that petitioner was a County Board member who was late for an important meeting. The officer said he followed petitioner some distance, stopped him again and issued the citation.

At his trial, petitioner testified that he may have been speeding but he was not driving a silver Chevrolet. He claimed he was driving his own green Cadillac. On cross-examination he testified that he did not borrow or rent a car on the day in question and that he had never driven a silver Chevrolet or a car with dealer license plates.

The Court, commenting on the fact that he did not believe a person of Mr. Briddle's intelligence would commit "cold and deliberate perjury", found that the State did not meet its burden of proving the petitioner guilty of speeding beyond a reasonable doubt.

Subsequently, the prosecution learned that the petitioner did in fact rent a car on the day in question.

The petitioner was charged with a two count indictment alleging perjury and obstruction of justice in that he concealed the physical car rental agreement. The trial court dismissed both counts of the indictment on the basis of double jeopardy, and the prosecution appealed. The Illinois Appellate Court, in an opinion fully set out in the petitioner's brief, reversed and reinstated both counts of the indictment. The petitioner sought leave to appeal to the Illinois Supreme Court and was denied. The petitioner now seeks a writ of certiorari from this Court to the Illinois Appellate Court in an attempt to cause a reversal of their opinion. The petitioner has not yet stood trial for perjury or obstruction of justice.

REASON FOR DENYING THE WRIT OF CERTIORARI

PETITIONER'S PROSECUTION FOR PERJURY AND OBSTRUCTION OF JUSTICE DOES NOT OFFEND THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In his petition for a writ of certiorari, petitioner asks this Court to invoke the doctrine of collateral estoppel as a corollary to the double jeopardy clause of the United States Constitution since the traffic court's discharge permanently disposed of all issues raised at the trial. He claims that the People are estopped from prosecuting him for perjury and obstruction of justice since those prosecutions emanated out of his testimony regarding the nature of the car he was allegedly driving, and the nature of the car was an issue during the speeding trial.

If the nature of the car was an issue, it was an irrelevant one interjected by the petitioner and was only useful to test the credibility of the officer.

The nature of the car which petitioner was driving at the time of the offense was neither a necessary allegation nor a necessary element of proof of the offense charged (i.e., speeding); nor did it tend to be dispositive of the speeding charge. *People* v. *Briddle,* 84 Ill. App. 3d 523, instant case.

Collateral Estoppel "(R)equires a court to examine the record of the prior proceeding ... and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose." *Ashe* v. *Swenson* (1970) 394 U.S. 436, 90 S. Ct. 1189, 25 L. Ed. 2d 469 at 475. Collateral estoppel only applies where the disposition of the ultimate fact of guilt or innocence in a prior proceeding "necessarily resolves" the fact issue in the perjury case. *United States* v. *Nash,* 447 F. 2d 1382 (4th Cir. 1971).

This longstanding federal rule directs a court to examine the facts of each case and determine whether the verdict of acquittal is inextricably intertwined with the fact at issue in the pending charge. The Illinois Appellate Court, recognizing *Ashe* as controlling precedent, made that very inquiry and determined that the petitioner's testimony regarding the nature of the auto he was driving was not necessarily resolved by the trial court's decision in the speeding case. The Court found that although the petitioner's testimony about his car was persuasive enough to cause the trial court to acquit petitioner of speeding, the description of the car was an extraneous matter under Illinois law and was not required to be proven by the State to convict petitioner of speeding. (*People* v. *Briddle,* 84 Ill. App. 3d 523, Pet. Brief, Appendix, p. 8)

Thus, the decision at the speeding trial did not necessarily resolve the issue of the description of petitioner's car and consequently does not estop the State from bringing criminal actions based upon petitioner's false testimony regarding the car.

Underlying any technical application of *Ashe* exists a serious balancing of policy considerations. These considerations have been aptly put by the Court in *Adams* v. *United States,* 287 F. 2d 701 (5th Cir. 1961):

> Two opposing policy considerations have weighed heavily in prior determinations of this problem. On the one hand the concern exists that allowing an acquittal to afford any sort of insulation for perjury will be giving defendants an uncontrollable license to testify falsely. The resulting detriment to the reliability of evidence and more so, to the stability of the judicial process, would only be enhanced by the obvious fact that the more persuasively flagrant the defendant's fabrication, the greater his chances of total exoneration. This completes a vicious circle since the successful acquittal on the substantive offense would immunize him as to the very falsehoods which brought it about. On the other hand some apprehension exists that allowing prosecution for perjury will actually give the state a second shot at the defendant for the same wrong.

287 F. 2d at 703.

The *Adams* decision is entirely consistent with *Ashe.* In *Ashe* this Court held that the federal rule of collateral estoppel is embodied in the Fifth Amendment guarantee against double jeopardy, reasoning that "(F)or whatever else that constitutional guarantee may embrace (it) surely protects a man who has been acquitted from having to 'run the gantlet' a second time." *Ashe* v. *Swenson,* 397 U. S. at 445-446, 90 S. Ct. at 1195.

If these be the policy considerations, Illinois is in accord. In the present case the Illinois Appellate Court reiterated the law announced in *People* v. *Ward,* 72 Ill. 2d 385, 381 N. E. 2d 259, and found that the courts must ask this realistic question: "Was the perjury prosecution really an effort to relitigate the (substantive) charge." (Petitioner's brief, Appendix, p. 10).

In analyzing the facts of the present case, the Illinois Appellate Court answered this question in the negative. The court found that the elements of the crime were different and the alleged falsehood, although material to the outcome of the trial, did not relate to an element of the offense of speeding.

The Illinois Appellate Court made a fair application of this Court's teaching in *Ashe,* and unless this Court is persuaded to modify *Ashe,* the Petition for a Writ of Certiorari should be denied.

CONCLUSION

For the aforestated reasons, the present Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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